IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.136 of 2001.

Date of decision:04.12.2006.

Shri Bhupinder Singh **….Petitioner**

Versus

Life Insurance Co.and Another **….Respondents.**

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The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.B.N. Misra, Advocate.**

For the Respondents: **Mr.Ashwani Sharma, Advocate,**

Dev Darshan Sud,J.

The petitioner has approached this Court by way of the present writ petition on the allegation that denial of employment to him by the respondent on compassionate grounds is illegal and un-constitutional. It is submitted by him that his father was employed as a Development Officer with the respondents. He died while in service on 20.12.1995, on which date the petitioner was minor. The petitioner further states that he had attained majority on 25.9.2000 and prior to that, a request/representation had been made vide Annexure P-1 to the Senior Divisional Manager of the respondent by his mother on 7th June, 1996 that the petitioner be given employment on compassionate grounds. The brother

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

and sister of the petitioner were also minors and the mother had expressed her inability to take up any employment as she was traumatized by the untimely death of her husband and was looking after the family consisting of minor children and ailing in-laws. The pleadings further show that the mother of the petitioner had raised some loans to bring up her family. According to the petitioner, the provision of reservation of post for appointment on compassionate grounds for minor sons/daughters of a deceased employee for a period of three years after the death of the parent in employment, is arbitrary and without any rational nexus to the object sought to be achieved.

The respondents in their reply have submitted that employment was offered to the mother of the petitioner who had declined to take the same. The respondents further relied upon three decisions, two of the Hon'ble Supreme Court and one of the Hon'ble High Court of Allahabad, wherein it has been held that the policy for compassionate employment should be construed as it is without being influenced by compassionate consideration. The policy/guidelines are to be strictly construed.

The respondents have framed a policy for recruitment of Class-III and Class-IV Staff, titled as : "The LIC Recruitment (of Class-III and Class-IV Staff), Instructions, 1993". Compassionate appointment is dealt with in clause-21 of the Instructions. It states that

there shall be relaxation in upper age limits and educational qualifications in favour of near relatives, as defined in sub-clause-(ii) of clause-21, of an employee who dies while in service. Sub-clause (v) provides that relaxation shall be admissible only if a request is made from the relative who satisfies the conditions of minimum educational qualifications, age etc. as prescribed, within a period of one year from the date of death of the employee or early retirement as specified. Clause-(c) of the proviso relaxes this limit up to three years from the date of death where all the children are minors.

It is submitted by the learned counsel for the petitioner that the application on his behalf for consideration of grant of compassionate employment was made well within time after the date on which his father died i.e. within a year of the death of his father. In any event, if the relaxation clause is to be invoked, the application had been made within three years from the date of the death of his father. In these circumstances, learned counsel for the petitioner submits that respondents be directed to consider his case for compassionate employment in terms of the instructions/policy as aforesaid.

Learned counsel appearing for the respondents has drawn my attention to two decisions of the Hon'ble Supreme Court of India and one of the Hon'ble High Court of Allahabad, namely; ***Life Insurance Corporation of***

India *vs.* ***Asha Ramchhandra Ambekar (Mrs.) (1994) 2 SCC 718, Punjab National Bank and others*** *vs.* ***Ashwini Kumar Taneja (2004) 7 SCC 265*** and ***Santosh Kumar*** *vs.* ***State of U.P. and others, 2004(2) SLR 420,*** in support of his contention that the policy framed by the respondents is valid and that there is no question of the Rules being arbitrary, unconstitutional or void. I do not find it necessary to go into this question in view of my decision hereafter.

Clause-21 of the Instructions provides for relaxation in favour of near relatives of an employee who dies while in service or retires at least five years prior to the date of superannuation. Clause-21 reads thus:

> **"21.Relaxation in favour of near relatives of an employee who dies while in service or retires at least 5 years prior to the date of superannuation:**
>
> **(i)** There shall be relaxation in upper age limits and educational qualifications in favour of near relatives as defined in (ii) below, of an employee who dies wile in service as prescribed in Annexure-III hereto.
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> Where an employee is retired prematurely under Regulations 19(3) of the (Staff) Regulations, on health grounds or on being incapacitated for continuous service at least five years before the date of his superannuation, compassionate appointments may be made of one of the relatives mentioned in (ii) below subject to the candidate satisfying all the requirements as prescribed for appointments in the event of death while in service. Such appointment may also be made where an employee is retired prematurely at least five years before the

date of his superannuation not for any misconduct but for poor performance.

(ii) Such relaxations shall be admissible only in favour of a spouse, son or unmarried daughter of the employee.

(iii) The relaxations shall be admissible only where none of the members of the family-spouse, son or unmarried daughter as gainfully employed. However, if the widow is already employed elsewhere, in Private Sector she will be allowed to take up a job in the Corporation in Class-III or Class IV Cadre commensurate with her qualifications if she opts for the same.

(iv) The relaxations shall be admissible either to the spouse or to one of the children as specified.

(v) The relaxations shall be admissible only if a request is received from the relative who satisfies the conditions of minimum educational qualifications, age, etc., as prescribed, within a period of one year from the date of death of the employee or early retirement as specified.

Provided that the time limit of one year may be extended in the cases specified below:

(a) A widow may be allowed upto 5 years from the date of death of her husband to secure the prescribed qualification for appointment to Class III post in the Corporation.

(b) A major son or unmarried daughter who satisfies the qualification for appointment to Class IV post, may be allowed upto two years from the date of death to secure prescribed qualification for

a Class III post if he/she so desires.

(c) Upto three years from the date of death where all the children are minor.

(vi) The mode of recruitment as prescribed in para 6 supra need not be followed for appointments under Paragraph 21.

(vii) All such appointments shall be subject to the existence of a sanctioned vacancy.

(viii) There shall be no pre-recruitment written test for the posts of Assistant, Stenographer, Typist, Telephone Operator and Record Clerk. However, for appointment to the posts of Stenographers, Typists, and Telephone Operators, the eligible candidates shall qualify in the trade test as prescribed.

(ix) There shall be no application fee payable.

(x) The relative of the employee, selected for the post of Assistant shall not be required to undergo training as prescribed.

(xi) Subject to the relaxations as provided herein, the selection of the relative of the employee, will be subject to his/her being found suitable for the post in the interview by the selection committee and in the medical examination. All such appointments shall be at the minimum of the scale applicable to the post. On appointment he/she will be on probation as prescribed under the (Staff) Regulations and confirmation will be subject to the satisfactory work record.

(xii) All appointments made subject to the relaxations herein shall be reported to the Zonal Office in a statement at the end of each

> financial year, who in turn shall send a consolidated statement to the Central Office.
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> **(xiii)** The application form shall be as prescribed in Annexure-IX hereto"

Admittedly, in the present case, the application for compassionate appointment on behalf of the petitioner, who is son of the deceased, was made on his behalf by his mother at the time when he was a minor. The documents on the record further show that although the mother was offered appointment, she declined to take it on the ground that she was looking after her minor children and ailing in-laws. The trauma of the early demise of her husband and the responsibilities of looking after her family without any support was putting her under considerable mental strain and agony.

This request was followed up by subsequent application again requesting for the grant of employment to the petitioner. The application/request was made to the Senior Divisional Manager of the respondents on 7th June, 1996 which was well before the expiry of one year of the death of late Shri Inder Singh Panchroo, father of the petitioner. The condition as prescribed by the proviso to clause-(v)(c) of Clause 21 of the policy was satisfied and nothing remained to be done. It is by now well settled that appointment on compassionate ground is not a matter of right, but is subject to the Rules framed by the employer for this purpose and that such

Rules have to be considered uninfluenced by any external consideration of compassionate.

A reading of the recruitment policy of the respondents, at Annexure R-1, shows that the relaxation in the qualification and age are admissible, if a request in that behalf is made from the persons seeking employment within the time limit stipulated by the Instructions. Clause-28 of the Instructions further vests discretionary powers with the Chairman for making any other relaxations, not provided or enumerated in the Instructions. Of-course, such relaxation is to be made only according to settled principles governing exercise of discretion and cannot be the subject matter of personal whims or fancies of the Chairman.

The respondents treated the case as one for reservation and have invoked the period of three years as the outer limit within which such employment can be provided. Annexure P-2, dated 28.7.1998, rejecting the claim of the petitioner, states that the post cannot be reserved because according to the Rules, after the death of the employee three years period has been kept for attaining the age of majority for the minor child. This is not a correct interpretation of the relaxation clause. Learned counsel for the petitioner submits that the application having been made in time, the request could not have been rejected on the ground that the post could be kept reserved for a period of three years only.

There is merit in the submissions of the learned counsel.

Reading Rules 21 and 28 of the Instructions in conjunction, it becomes clear that this period could be further extended on grounds germane to the main purpose which is to provide economic succour to the family of the deceased.

As I have held that the application on behalf of the petitioner for being appointed on compassionate ground has been made within time and according to the Instructions (Annexure R-1), such application should be made within a period of one year from the date of death relaxable up to three years in the case of minor. This request having been made within time, the case of the petitioner was required to be considered on the date on which he had attained majority taking into consideration the entire family financial background, the hardship under which they had been placed and the need for a provision of financial relief to the family. The order Annexure P-2 is quashed and set aside and it is directed that the respondents reconsider the case of the petitioner in accordance with law and to ascertain as to whether the family is in such economic state requiring provision of immediate employment to the petitioner. Needless to say that such consideration will be made in terms of the Instructions and the law as also the existing ground realities. The claim of the petitioner should not be thrown out on technicalities. For this

purpose, the petitioner will make a representation to the respondents within a period of eight weeks from today and the respondents will consider the same and dispose it of with a reasoned order within a further period of eight weeks. A personal hearing will be given to the petitioner, if he so desires.

In view of what I have held, I find it unnecessary to go into the question regarding the constitutional validity of the Instructions as challenged in the writ petition.

The request of the petitioner will be disposed of by a reasoned order. In view of what I have held, I find unnecessary to pronounce upon the question of constitutional validity of the Instructions.

The writ petition is, accordingly, disposed of. There shall be no order as to costs.

December 4, 2006. **(Dev Darshan Sud)**
(aks) **Judge.**